General Printing Company *and* Detroit Typographical Union, Local No. 18, International Typographical Union, AFL–CIO. Case 7–CA–19604

August 20, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On May 12, 1982, Administrative Law Judge Richard A. Scully issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, General Printing Company, Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

RICHARD A. SCULLY, Administrative Law Judge: Upon a charge filed by Detroit Typographical Union, Local No. 18 (herein called the Union), on March 16, 1981, and an amended charge filed on March 24, 1981, the Regional Director, for Region 7, National Labor Relations Board (herein called the Board), issued a complaint on April 20, 1981, alleging that General Printing Company (herein called the Respondent) had violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (herein called the Act), by failing and refusing to execute and abide by the terms of a collective-bargaining agreement negotiated in its behalf by a multiemployer association. Thereafter, the Respondent and the Union entered into an informal settlement agreement which was approved by the Regional Director on April 27, 1981. On May 27, 1981, the Regional Director entered an "Order Setting Aside Settlement Agreement" on the grounds that the Respondent had failed to comply with the terms of the settlement agreement. The Respondent has filed an answer to the complaint denying that it has committed any violation of the Act.

A hearing was held in Detroit, Michigan, on February 24, 1982, at which all parties were given a full opportunity to participate, to examine and cross-examination witnesses, and to present other evidence and argument. A brief submitted on behalf of the General Counsel has been considered. Following the hearing, Henry Hertzberg, the president of the Respondent, who is not an attorney, submitted a letter with certain documents enclosed which had not been offered or received in evidence and, not being part of the record, have not been given any consideration by me in arriving at this decision. Upon the entire record and from my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material, the Respondent has been a Michigan corporation engaged in the printing business with its office and place of business in Detroit, Michigan. During the year ending December 31, 1980, the Respondent in the course and conduct of its business derived gross revenues in excess of $500,000 and performed services for the Michigan Employment Security Commission which were valued in excess of $50,000. During the same period, Printing Industries of Michigan, Inc. (herein called PIM), was a multiemployer bargaining association whose members collectively in the course and conduct of their business derived gross revenues in excess of $500,000 and purchased goods and materials valued in excess of $50,000 which were shipped to them directly from points located outside the State of Michigan. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. I find that PIM is also such an employer.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that the Union, at all times material, was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Union and PIM, formerly known as Graphic Arts of Michigan, Inc., have maintained a collective-bargaining relationship extending at least as far back as 1959. The contract involved in the instant case was negotiated between September 23 and November 5, 1980, and was basically an extension of their previous agreement[1] with some modification and covered the period from November 1, 1980, to October 31, 1981. The contract was ratified by the union membership on November 16, 1980, and was signed by representatives of the Union and the multiemployer association.

The Respondent had been a member of PIM and its predecessor at least since 1959 and had executed every contract that the association had bargain from that time up until the contract involved here.

Union President William J. Croteau credibly testified that, once the contract in question was agreed upon, a single page setting forth the modifications to the lan-

[1] The previous agreement covered 3 years from November 1, 1977, to October 31, 1980.

guage of the previous contract, which was incorporated by reference, was prepared in printed form and was sent to each of the approximately 26 members of the association for signature. Croteau sent two copies of the contract signed by the Union to the Respondent in the latter part of January 1981, with a cover letter requesting that both copies be signed and that one be returned. After a month, approximately seven employers, including the Respondent, had failed to return executed copies of the agreement. Croteau contacted covered employees at each company and determined that all employers, including the Respondent, had implemented the new contract.

In mid-February, Croteau contacted Respondent's president, Henry Hertzberg, by telephone and asked why he had not returned the executed contract. Hertzberg responded that he had not received it. During their conversation in which other matters were also discussed, referring to the contract, Hertzberg asked: "Don't we get to talk about it," and Croteau agreed to a meeting at the Respondent's plant on February 13, 1981. On that date, Croteau and Edward Piper, the Union's organizing director, went to the Respondent's plant and met with Hertzberg, his son David Hertzberg, and a former partner named Thomas. At the meeting, which lasted about an hour, Hertzberg and his associates made several complaints about matters unrelated to the contract, some involving other unions. Croteau told Hertzberg that he had come for the expressed purpose of getting Hertzberg to sign the contract and that he had nothing to do with other unions. After some further discussion, Hertzberg began talking about how he had been cheated by another union and the association involving a grievance over bereavement pay. Croteau interrupted and told Hertzberg he was there only to get the contract signed Hertzberg then said he had to have the bereavement leave provision out of the contract. Croteau told him he was not there to negotiate, only to get the contract signed, but that if Hertzberg wanted something explained Croteau would explain it to him. Croteau asked Hertzberg if he would sign the contract and Hertzberg said he wanted the section[2] just before the space for the employer's name and signature deleted. Croteau asked if that was what was bothering Hertzberg and if it was taken out would he sign? Hertzberg did not respond directly, but began to talk about other sections of the contract. Croteau refused to talk with him about any other provision in the contract and the meeting terminated after he asked Hertzberg if he was going to sign the contract or not. Hertzberg again started talking about unrelated problems with other unions and Croteau picked up his papers and left.[3]

Following this meeting, on March 2, 1981, Croteau sent the Respondent a letter enclosing two copies of the contract with the "conciliation clause" deleted and requesting that the Respondent sign the contract by March 13, 1981, or the Union would withdraw "all its obligations to General Printing Company." The Respondent did not respond to the letter and the Union made no further effort to have the Respondent execute the contract before filing its charge with the Board.

Analysis and Conclusions

The Respondent contends that it had withdrawn from PIM before negotiations for the contract began. It admits that the Union was sent written notice that it had withdrawn, but claims that the Union was aware of that fact. It also contends that the Union, by agreeing to negotiate a new contract with it directly, consented to and acquiesced in its withdrawal.

In *Retail Associates, Inc.*,[4] the Board established criteria governing withdrawal from multiemployer bargaining. An employer or union may withdraw from multiemployer bargaining for any reason provided that it gives adequate written notice prior to the date set for renegotiation of the existing contract or the date on which negotiations actually commence. Once negotiations start, a party can withdraw only with the "mutual consent" of the parties or where "unusual circumstances" exist.

In the present case, the Respondent admits that it did not send written notice to the Union prior to the commencement of negotiations on September 23, 1980. It had sent written notice that it was no longer a member of PIM and that it wished to negotiate a separate contract to the pressmen's union with which it also dealt, by letter dated May 22, 1980,[5] thus indicating that it was aware of the necessity of giving written notice of its withdrawal to the affected unions. There is nothing in the record to support the Respondent's claim that Croteau or anyone else in the Union had knowledge of this letter to the pressmen's union before September 23, 1980. There is also no evidence that prior to that date the Respondent had demonstrated to the Union an unconditional and unequivocal intent to abandon multiemployer bargaining with it. Having failed to give the Union the required written notice of its withdrawal from PIM before negotiations concerning the subject contract began, the Respondent's attempted withdrawal from multiemployer bargaining was untimely and ineffective.[6]

There is no indication of the presence of any "unusual circumstances" in this case; however, the Respondent contends that Croteau's conduct on behalf of the Union constituted acquiescence in or implied consent to its withdrawal. In order to do so,

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[2] That section, identified by Croteau as a "conciliation clause," states:

> The foregoing agreement is hereby accepted and approved by the individual Employer whose name and signature appears below, with the understanding that right of representation in any collective bargaining negotiations that may arise under this agreement, or a renewal thereof, is hereby delegated to the Labor Relations Committee representing the Employers, which Committee shall be selected by a majority vote of the Employers operating under this agreement.

[3] Croteau's testimony concerning what occurred at the meeting on February 13, 1981, is uncontradicted. Edward Piper was called as a witness by the General Counsel and the Respondent stipulated that his testimony would corroborate that of Croteau in every respect. Neither Thomas nor David Hertzberg, who had attended the meeting, was called as a witness. In his testimony Henry Hertzberg admitted that Croteau refused to discuss any modification of the contract except the "conciliation clause."

[4] 120 NLRB 388 (1958).

[5] The testimony of Henry Hertzberg was that the Respondent notified PIM of its withdrawal from membership in a letter dated January 28, 1980.

[6] *Dickmont Plastics Corporation*, 208 NLRB 382 (1974); *I. C. Refrigeration Service, Inc.*, 200 NLRB 687 (1972); *Retail Associates, Inc., supra.*

> . . . such conduct usually must involve a course of affirmative action "clearly antithetical" to the union's claim that the employer has not withdrawn from multiemployer bargaining. In this regard, the Board will examine the totality of the union's conduct to determine whether, by that conduct, the union has consented to, or acquiesced in, the employer's attempted withdrawal.[7]

I find no credible evidence in the record to suggest that, when Croteau agreed to meet with Hertzberg at the latter's request, he knew or even had reason to suspect that the Respondent had withdrawn from PIM. Although Hertzberg testified that during a telephone conversation with Croteau about an unrelated matter involving a former employee he "reminded" Croteau that they would "have to get together regarding a new contract," he could not say definitely when this conversation occurred. At one point, he said that it was "late summer or fall" 1980 and another time that it was "some time later in 1980," Croteau admitted having a number of telephone conversations with Hertzberg which were unrelated to the subject contract, but denied that Hertzberg ever told him that the Respondent was no longer a member of PIM. I credit Croteau's emphatic denial over Hertzberg's vague and questionable recollection and find that Hertzberg did not advise Croteau in 1980 or, thereafter, that the Respondent had withdrawn from PIM.

When the Respondent failed to return a signed copy of the contract Croteau had sent it in January 1981, Croteau contacted the one covered employee at the Respondent's plant and learned that the wage provisions of the new contract had already been implemented. Hertzberg admitted this was true. At no time during the telephone conversation during which the meeting on February 13, 1981, was arranged or during the course of that meeting did Hertzberg say that the Respondent had withdrawn from PIM, although he did express his dissatisfaction with the association's handling of a grievance over bereavement pay. Croteau's first knowledge of the Respondent's withdrawal from PIM came after the meeting on February 13, when he inquired and was told about it by an official of PIM.

It is in this context that Croteau's conduct on February 13 must be considered. Croteau admitted that it was unusual for him to have hand-carried a copy of the contract to the Respondent, but only because no one had ever asked him to do so before. Croteau agreed to meet with Hertzberg on February 13 in order to get the contract signed and to answer any questions Hertzberg might have. I credit Croteau's statement that Piper accompanied him to the meeting because he did not wnat to go by himself into the neighborhood where the Respondent's plant is located. There is nothing in the record to indicate that Piper was one of the union contract negotiators or was present to negotiate.

At the outset of the meeting on February 13, Croteau stated that he was there to obtain the Respondent's signature on the contract negotiated with PIM and he repeated this several times during the meeting. During the course of the meeting, Hertzberg interspersed objections to certain contract provisions among complaints and comments about unrelated matters; however, there is no evidence that he made any concrete contract proposals or that Croteau made any counterproposals or agreed to discuss any substantive modifications of the contract. When it became apparent that Hertzberg would not sign the contract, Croteau terminated the meeting and left without scheduling a further meeting with the Respondent.

The Respondent contends that the statement in Croteau's letter of March 2, 1981, to Hertzberg, that "the Union is willing to meet with you prior to March 13, 1981 for the purpose of reaching an agreement with your company," evidences a willingness to bargain with it on an individual basis. Placed in context, it is clear that this is not the case. The letter, which forwarded additional copies of the contract negotiated with PIM, requested the Respondent "to sign the enclosed Agreement no later than March 13, 1981," and made reference to the fact that the Respondent had failed to give the Union timely notice of its withdrawal from PIM, can only be construed as a demand that the Respondent sign the contract negotiated with PIM.

Although Croteau did agree to delete the language immmediately preceding the space for the employer's signature, if Hertzberg would sign the contract, this had no effect on the substantive provisions of the contract. It appears that this language, which Croteau referred to as the "conciliation clause," was not really what Hertzberg was concerned about. Hertzberg was complaining about the provision in the previous contract, which was to be incorporated by reference into the new contract, providing for a "Conciliation Committee" to resolve disputes by conciliation and/or mediation. I do not credit Hertzberg's unsupported testimony that he and Croteau had already discussed this provision in a meeting held in January 1981, a meeting which Croteau denied ever occurred, or that Croteau had made any agreement about the provision. The confusion over the "conciliation clause" serves to further convince me that Croteau did not agree to and did not engage in negotiating with the Respondent.

After considering the totality of the Union's conduct in this matter, I find that it did not evidence a willingness to engage in individual bargaining with the Respondent since, at the time Croteau and Hertzberg met, Croteau was not even aware that the Respondent had withdrawn from PIM, Croteau refused to discuss any substantive changes, and insisted that the Respondent sign the contract agreed to by the Union and PIM. Croteau did nothing which could be considered "clearly anithetical" to the Union's claim that the Respondent had not withdrawn from multiemployer bargaining. On the contrary, Croteau's actions demonstrate that the Union's position was that the Respondent was bound by the contract resulting from multiemployer bargaining.

Inasmuch as the Respondent did not effectively withdraw from the multiemployer bargaining association before the beginning of negotiations for a new contract and the Union did not thereafter acquiesce in or consent to its withdrawal, by its refusal to abide by the agree-

[7] *I. C. Refrigeration Service, supra* at 689.

ment negotiated by the Union for the period from November 1, 1980, to October 31, 1981, and to execute a copy thereof as requested by the Union, the Respondent violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. At all times material, the Respondent was a member of Printing Industries of Michigan, Inc., a multiemployer bargaining association, its attempted withdrawal therefrom without notice to the Union being ineffective.

2. At all times material, the Respondent and PIM constituted an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union is labor organization within the meaning of Section 2(5) of the Act.

4. By refusing to honor and abide by the contract agreed to by the Union and PIM covering the period from November 1, 1980, to October 31, 1981, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act. I shall recommend that the Respondent be directed to sign and give retroactive effect to the contract negotiated in its behalf by PIM effective November 1, 1980, and make whole any employees covered by the contract for any monetary losses they may have suffered as a consequence of the Respondent's unlawful refusal to honor the contract. The evidence indicates that the Respondent did pay the wages prescibed in the contract but failed to make certain pension contributions due under the terms of the contract.

The Respondent contends that it has already posted appropriate notices in accordance with the terms of the settlement agreement previously entered but later set aside the Regional Director due to the Respondent's failure to fully comply therewith. Inasmuch as the settlement agreement has been set aside, the notices posted pursuant thereto are of no effect and the Respondent should be ordered to post appropriate notices as a result of the Decision entered herein.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[8]

The Respondent, General Printing Company, Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to honor and abide by the collective-bargaining agreement executed by PIM and the Union, effective November 1, 1980, and refusing to comply with the agreement's terms.

(b) Refusing to bargain collectively with the Union as a member of PIM until such times as the Respondent shall timely and effectively withdraw from PIM.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Upon request of the Union, sign and give retroactive effect to the contract executed by the Union and PIM, effective November 1, 1980, and make whole any employees covered by the contract for any monetary losses they may have suffered as a consequence of the Respondent's refusal to honor and abide by the contract, including the payment of all pension contributions due under the terms of the contract.

(b) Upon request, bargain with the Union as a member of PIM until such time as the Respondent shall timely and effectively withdraw from PIM.

(c) Post at its plant in Michigan, Detroit, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by an authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all parties had an opportunity to present evidence, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice and to carry out its terms.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in

the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL, upon request of the Union, honor and give retroactive effect to the contract executed by the Union and Printing Industries of Michigan Inc., effective November 1, 1980, and WE WILL compensate any employee covered by the contract for any monetary losses suffered as a result of our refusal to sign the contract.

WE WILL, upon request of the Union, bargain with it as member of PIM until such time as we shall effectively withdraw from PIM.

GENERAL PRINTING COMPANY